

IN THE
SUPREME COURT OF INDIANA

ORDER AMENDING RULES FOR
ALTERNATIVE DISPUTE RESOLUTION

Pursuant to the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administrative procedures of all courts within this state, *Rules 1.4, 1.6, 2.6, 2.7, 7.3, Guideline 8.8, and Form B* of the *Rules for Alternative Dispute Resolution* are amended to read as follow (deletions shown by ~~striking~~ and new text shown by underlining):

RULE 1. GENERAL PROVISIONS

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Rule 1.4 Application of Alternative Dispute Resolution

~~Unless limited by specific provisions, or unless there are other specific statutory procedures which are applicable, these~~ These rules shall apply in all civil and domestic relations litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state. ~~These rules shall not apply to the following cases and proceedings:~~

- ~~(A) criminal;~~
- ~~(B) actions to enforce infractions or ordinance violations;~~
- ~~(C) juvenile;~~
- ~~(D) forfeitures of seized properties;~~
- ~~(E) habeas corpus or other extraordinary writs;~~
- ~~(F) such other matters as may be specified by order of the Indiana Supreme Court;~~
- ~~(G) matters in which there is very great public interest, and which must receive an~~

~~immediate decision in the trial and appellate courts; and~~

~~(H) small claims proceedings.~~

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Rule 1.6. Discretion in Use of Rules

Except as herein provided, a presiding judge may order any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation, non-binding arbitration or a mini-trial. The selection criteria which should be used by the court are defined under these rules. Binding arbitration and a summary jury trial may be ordered only upon the agreement of the parties as consistent with provisions in these rules which address each method.

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Rule 2.6. Mediation Costs

Absent an agreement by the parties, including any guardian ad litem, court appointed special advocate, or other person properly appointed by the court to represent the interests of any child involved in a domestic relations case, the court ~~shall~~ may set an hourly rate for mediation and determine the division of such costs by the parties. The costs should be predicated on the complexity of the litigation, the skill levels needed to mediate the litigation, and the litigants' ability to pay. The mediation costs shall be paid within thirty (30) days after the close of each mediation session.

Rule 2.7. Mediation Procedure

(A) Advisement of Participants. The mediator shall:

~~(1) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties;~~

~~(2)~~ **(1)** advise the parties of all persons whose presence at mediation might facilitate settlement; and

~~(3)~~ **(2)** in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children.

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(C) Confidential Statement of Case. ~~In civil litigation, the attorney for each~~ Each side may submit to the mediator a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation conference, which shall include:

- (1) the legal and factual contentions of the respective parties as to both liability and damages;
- (2) the factors considered in arriving at the current settlement posture; and
- (3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. ~~These materials shall be made available to opposing counsel at least five (5) days prior to the mediation conference.~~ The confidential statement of the case shall at all times be held privileged and confidential from other parties unless agreement to the contrary is provided to the mediator. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. ~~The mediator may share revealed settlement authority with other parties or their representatives. If the mediation process does not result in settlement, any submitted confidential statement of the case shall be returned to the submitting attorney or party.~~

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Rule 7.3. Disclosure and Other Communications

(A) A neutral has a continuing duty to communicate with the parties and their attorneys as follows:

- (1) notify participants of the date, time, and location for the process, at least ten (10) days in advance, unless a shorter time period is agreed by the parties;

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- (7) advise parties of their right to obtain independent legal counsel; and
- ~~(8) explain the extent to which information obtained through the process from and~~

about any participant is not privileged and may be subject to disclosure; and

(9) (8) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation.

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Guideline 8.8. Settlement Agreement

If an agreement to settle is reached, it ~~should~~ shall be reduced to writing promptly and a copy provided to all parties.

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Form B: Pre-Suit Mediation Agreement

The undersigned parties, in person and by counsel, agree to mediate their dispute, prior to the filing of litigation, pursuant to the following terms:

1. _____ will act as the mediator and will be compensated at the total hourly rate of \$_____. Each party is responsible for paying one-half of the mediator's fees and expenses unless otherwise agreed by the parties prior to or during mediation.

2. The mediation will be conducted in accordance with the Pre-Suit Mediation ~~Guidelines~~ Guideline established by the Indiana State Bar Association.

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5. The mediation shall be regarded as settlement negotiations and shall be subject to the same confidentiality protections as provided in Indiana ADR Rule ~~2.12~~ 2.11.

...

_____	<u>Date</u>	_____	<u>Date</u>
Party		Party	

_____	<u>Date</u>	_____	<u>Date</u>
Attorney		Attorney	

Mediator

These amendments shall take effect on January 1, 2001.

The Clerk of this Court is directed to forward a copy of this order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency; Office of Code Revision, Legislative Services Agency; Administrator, Supreme Court of Indiana; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission on Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; the libraries of all law schools in the state; the Department of Correction for posting at all prison libraries; The Michie Company; and West Publishing Company.

West Publishing Company is directed to publish this order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this order to the attention of all judges within their respective counties and to post this order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this ____ day of December, 2000.

FOR THE COURT

Randall T. Shepard
Chief Justice of Indiana

All Justices Concur.